



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0002]

Controlled Substances and Alcohol Use and Testing: J.B. Hunt Transport, Inc., Schneider National Carriers, Inc., Werner Enterprises, Inc., Knight Transportation, Inc., Dupre Logistics, Inc. and Maveric Transportation, LLC Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from J.B. Hunt Transport, Inc. (J.B. Hunt), Schneider National Carriers, Inc. (Schneider), Werner Enterprises, Inc. (Werner), Knight Transportation, Inc. (Knight), Dupre Logistics, Inc. (Dupree), and Maveric Transportation, LLC (Maverick) (the Applicants) to allow hair analysis in lieu of urine testing for pre-employment controlled substances testing of commercial driver's license (CDL) holders. The Applicants currently conduct pre-employment urine testing that satisfies the Department of Transportation's (the Department) requirements under 49 CFR Part 40 and hair analysis, separate from the Department's controlled substances and alcohol testing program. The Applicants' believe their data ". . . demonstrates that hair analysis is a more reliable and comprehensive basis for ensuring detection of controlled substance use" and the exemption would enable these fleets to discontinue pre-employment urine testing. FMCSA requests public comment on the exemption application.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2017-0002 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received, without change, to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without

edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: (614) 942-6477. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2017-0002), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, “FMCSA-2017-0002” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an

individual or on behalf of a third party, and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

Background - Regulatory Requirements

Currently, 49 CFR 382.105, concerning FMCSA's controlled substances and alcohol testing regulations, requires that each employer ensure all alcohol or controlled substances testing conducted on CDL holders complies with the procedures under 49 CFR Part 40. All parties who conduct controlled substances and alcohol tests required by the Department must follow the Part 40 requirements on how to conduct the test and what procedures to use. Currently, Part 40 only allows urine testing for controlled substances. Congress, through the Omnibus Transportation Employee Testing Act (OTETA) of 1991 (Pub. L. 102-143, Title V, 105 Stat. 952). OTETA requires the Department to follow the HHS Mandatory Guidelines for scientific testing issues. While DOT has discretion concerning many aspects of the regulations governing testing in the transportation industries' regulated programs, we must follow the HHS Mandatory Guidelines for the laboratory standards and procedures the Department will use for regulated testing.

Section 382.301 provides requirements concerning pre-employment testing of commercial driver's license (CDL) holders for controlled substances, while 49 CFR Part 383 prescribes requirements for individuals who must obtain a CDL. With limited exceptions, an employer must conduct pre-employment testing for controlled substances prior to the first time a driver performs "safety-sensitive functions," as defined in 49 CFR 382.107. Employers must not allow a driver whom the employer intends to hire or use to perform safety-sensitive functions unless the employer has received a controlled substances test result from the medical review officer (MRO) or consortium/third-party administrator (C/TPA), as those terms are defined in 49 CFR 40.3, indicating a verified negative test result for that driver.

Application for Exemption

The Applicants have requested an exemption from 49 CFR 382.105 and 382.301 with specific authorization for release of and obtaining hair test results to comply with 49 CFR 391.23, *Investigations and inquiries*. Under the exemption, the carriers would conduct pre-employment tests using hair analysis only, rather than hair analysis in addition to urine testing, and individuals with negative test results would be permitted to perform safety-sensitive functions for the employer. Individuals testing positive would not be allowed to perform safety-sensitive functions until the driver completes the return-to-duty process under Subpart O of 49 CFR Part 40. In addition, the Applicants would share the positive hair testing results with prospective employers in response to safety-performance inquiries required by 49 CFR 391.23.

The carriers that would be covered by the exemption already use hair analysis as a method for pre-employment controlled substances testing of drivers on a voluntary basis. However, they also conduct urine testing for drugs because it is the only screening method accepted under the Department's regulations. The Applicant's view their use of multiple screening methods as an unnecessary and redundant financial burden. Also, the Applicants consider urine testing to be less effective in pre-employment screening for drugs than hair analysis.

A copy of the exemption application and all supporting documents submitted by the Applicant is available for review in the docket referenced at the beginning of this notice.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comment on the application for an exemption from 49 CFR 382.105 and 382.301. The Agency will consider all comments received by close of business on [INSERT DATE 30 DAYS AFTER PUBLICATOIN IN THE FEDERAL REGISTER]. Comments will be available for examination in the docket at the location listed under the ADDRESSES section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: January 13, 2017

Larry W. Minor
Associate Administrator for Policy

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